

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

2

3 TRANS-SPEC TRUCK)
SERVICE, INC.,)

4)
Plaintiff)

5)

VS.) CIVIL ACTION NO. 04-11836-RCL

6)

CATERPILLAR, INC.,)

7)

Defendant)

8)
_____)

9

10 DEPOSITION OF DONALD MEDBERY, a witness
11 called on behalf of the Defendant, pursuant to
12 Federal Rules of Civil Procedure 30 and 45, before
13 Camille Palladino-Duffy, Registered Professional
14 Reporter and Notary Public in and for the State of
15 New Hampshire, at the Marriott Residence Inn, 1
16 International Drive, Portsmouth, New Hampshire, on
17 Thursday, May 12, 2005, commencing at 10:04 a.m.

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C. J. Reporting

A5 Colonial Drive, Unit No. 7

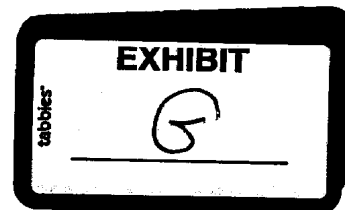
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1 for their, you know, for their software for specs,
 2 specking out a truck.
 3 Q. All right. Does Spec Pro 1.11 identify
 4 proprietary Sterling software?
 5 A. Right.
 6 Q. And you, as a salesman, had access to that
 7 software --
 8 A. Correct.
 9 Q. If you were generating a proposal --
 10 A. Uh-huh.
 11 Q. -- how would you use that software? What inputs
 12 would you make into that software?
 13 A. What inputs I would use?
 14 Q. Yes.
 15 A. Well, first of all, you just call up the standard
 16 chassis, which is the, you know, the LT 9500, and
 17 then that would automatically -- everything that
 18 was standard on the truck would pop up. And then
 19 you'd start working from there, depending on what
 20 the customer wanted as far as engines and
 21 transmissions and rear-ends and suspensions and
 22 what not, instrumentation and frames. And when
 23 you do all that, you would just input it in there
 24 and it would automatically convert it over and you

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1 how they work.
 2 This is a proprietary Sterling software that,
 3 as you enter specifications into the software, it
 4 is designed to alert you to the fact -- or to
 5 alert you if what you have entered creates an
 6 issue as to the --
 7 A. Correct.
 8 Q. -- as to the standard --
 9 A. Just --
 10 Q. -- truck?
 11 A. If there's a non-compliance factor entered there.
 12 Q. Okay. And did you make use of that Sterling
 13 proprietary software throughout your discussions
 14 with Mr. Howard with respect to these trucks that
 15 his company ultimately bought?
 16 A. Well, we spec'd it out for what the loads are, so
 17 we would put the correct specifications in. But
 18 we would work -- but you got to remember, we also
 19 worked with the suppliers, the component
 20 suppliers, like your supplier at Caterpillar,
 21 Cummins or Detroit, and Fuller transmissions,
 22 Eaton transmissions or rear ends. And we would --
 23 the factory would allow you to do so much and
 24 that's why you have gross, you know, GCW, you

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1 just print it out.
 2 Q. When you would input a particular piece of
 3 equipment a customer had said he wanted on the
 4 truck, would this Spec Pro 1.11 program
 5 automatically adjust any other equipment on the
 6 truck to accommodate the new specification you had
 7 input?
 8 A. Well, if you put in an engine, then you would
 9 get -- if it didn't -- it wouldn't automatically
 10 supplement the transmission or whatever. It would
 11 just tell you -- I've worked with a lot of these
 12 systems in my career so I can't specifically say
 13 what Sterling's is now because I try to blank out
 14 everything that happened at Sterling.
 15 So what would normally happen would be an
 16 asterisk or something would come up, or a message
 17 would come up and say, you know, "horsepower
 18 exceeds the limits of the standard transmission
 19 and you must pick another transmission to go into
 20 that grade," and stuff like that.
 21 Q. You've worked with a lot of these. I haven't
 22 worked with any of them.
 23 A. I understand.
 24 Q. And that's why I'm trying to understand generally

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1 know, combined gross weight. And then if it got
 2 beyond that, then you had to get, you know,
 3 approval by engineering.
 4 Q. Did you, yourself, have any communications with
 5 Southworth-Milton in connection with Mr. Howard's
 6 purchase of these trucks?
 7 A. Well, that's a common thing that happens. The
 8 engine supplier, transmission people, whatever,
 9 whatever it was that was going to go into a truck
 10 and when an order for 22 trucks comes up, they are
 11 all around there sniffing at your door.
 12 So, I mean, they all want the business, so
 13 they come up with their recommendations and then
 14 they, obviously, you send them down to see
 15 Mr. Howard because he's buying the truck and let
 16 them all do the battle on the battle ground down
 17 there and you sit back and watch it until the
 18 smoke clears.
 19 Q. Did --
 20 A. And then you end up with a set of specs.
 21 Q. Who from Southworth-Milton do you remember talking
 22 to about this particular transaction?
 23 A. A very, very knowledgeable guy named Harry
 24 Calderbank.

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- 1 Q. What do you remember Harry Calderbank telling you
2 and what do you remember telling Harry Calderbank?
3 A. I'm sure we had several conversations because we
4 didn't only talk about Mr. Howard's trucks, we
5 talked about many, many trucks. Conversations
6 always went the same way. Just want to make sure
7 that what we prepared would do the job for the
8 application. That's what our job is.
9 Q. Well, tell me in a little more detail what you
10 mean by that?
11 A. Well, if you, obviously, not only Harry Calderbank
12 was involved, you have a regional representative
13 from Caterpillar factory as Cummins does and
14 Fuller does, and all of them, and they get
15 involved when the number gets up. Even they get
16 involved sometimes when it's only onesies or
17 twosies, because you want to make sure you're not
18 getting out of the box.
19 Q. I'm going to ask you about the people from
20 Caterpillar that you dealt with in a minute, but
21 what I want to find out is your best memory of the
22 discussions that you had with Mr. Calderbank
23 concerning this transaction.
24 A. Well, Mr. Calderbank had a -- also had a

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- 1 have to believe in.
2 Q. Being a salesman yourself --
3 A. I understand that. And he was very, very
4 thorough. Harry Calderbank was a very, very
5 thorough guy. He was knowledgeable and very -- he
6 just didn't want to do the wrong thing. I mean,
7 he was very conscientious. Still is to this day,
8 I imagine, if he's still alive.
9 Q. He's not in Massachusetts anymore.
10 A. Okay.
11 Q. Do you remember when he actually gave you a
12 document to look at?
13 A. Oh, yeah. I mean, I would have. I wouldn't be
14 able to do -- I would never proceed on my own just
15 because I think I'm smart, I wouldn't proceed in
16 set up a set of specifications for a customer for
17 one truck, let alone 22 without documentation from
18 the -- not only from him, but from the other guys.
19 Q. Well, just talking about Mr. Calderbank for now --
20 A. Okay.
21 Q. -- I take it he gave you a document that had data
22 in it such as fuel economy, road speed,
23 gradability, miles per hour, horsepower --
24 A. Performance.

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- 1 computer-generated specifications and it came
2 directly from Caterpillar. And he would run that
3 specs off so that I could input them into my
4 specifications so that we have the correct engine
5 application and for torque and horsepower for the
6 proposed application that it's going to be
7 introduced into.
8 Q. So, I take it then, that Mr. Calderbank provided a
9 document to you that contained various parameters
10 for the engines that he was talking with you
11 about?
12 A. Everything. It would be fuel economy, it would be
13 road speeds, gradability, miles per gallon, just
14 about anything you'd want to know before so that
15 you know that when you bought it, you know what
16 you got.
17 Q. Do you remember, other than fuel economy, road
18 speed, gradability, miles per gallon, what other
19 information he gave you about the engine?
20 A. Well, I can only say that every engine
21 representative, including Mr. Calderbank, was
22 always exuberant about what their engine would do.
23 It was always better than the other guys. So,
24 that's what you have to do because that's what you

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- 1 Q. -- torque --
2 A. Performance capability.
3 Q. And you would then input that data into this Spec
4 Pro 1.11 --
5 A. Correct.
6 Q. -- program?
7 A. Correct.
8 Q. And how would that Spec Pro 1.11 program
9 manipulate the engine data that you were
10 inputting?
11 A. Well, the only data you put in was the engine
12 itself because in the model -- in the exact model
13 and the rating, and the Spec Pro was already
14 programmed to handle all the engines, you know,
15 handle Caterpillar's engine requirements and their
16 specifications, you know, to be presented in the
17 chassis.
18 Q. All right. So if I understand correctly then,
19 what you input into Spec Pro was, in this case,
20 C-12 engine?
21 A. Right, C-12.
22 Q. And what other information about the engine would
23 you put in?
24 A. I put in horsepower and torque.

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1 Q. And you then relied on this proprietary Sterling
2 software to determine what the various specific
3 parameters of those engines would be and how they
4 would fit in this Sterling truck overall?
5 A. Well, what it would do is, specifically, it would
6 tell you that if you wanted a 10-speed
7 transmission, it would punch out the 10-speed with
8 the torque limits in it. And if you wanted a
9 40,000 pound rear axle, it would punch out the
10 rear axle. And if you wanted the ratio, it would
11 tell you, you know, what the ratios are, you know,
12 that you are going to use, it's going to produce
13 the road speed and where the fuel economy would be
14 most efficient, and it would do the same thing --
15 These were friendly systems or software
16 systems that were compatible and they would do the
17 same thing on both ends. His would tell -- Harry
18 Calderbank's would tell you all the same things
19 that Minuteman's would tell you because
20 Minuteman -- not Minuteman -- Sterling would get
21 all that information from Cat corporate, see, and
22 they worked in conjunction with Cat corporate so
23 that they had all these compatible information
24 plugged in.

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1 covered.
2 Q. Now, did you give Mr. Calderbank a copy of more
3 than one --
4 A. Probably not.
5 Q. -- quotation that you put together?
6 A. Probably not. I think he probably had a copy of
7 the -- when I worked with him and he gave me his
8 information, I plugged the information in. When
9 it was all finalized, if he wanted a copy of it,
10 I'd give it to him.
11 Q. What if he didn't ask you for a copy?
12 A. Then I wouldn't give it to him.
13 Q. Do you remember specifically giving him any
14 specification proposals similar in type to Exhibit
15 Howard No. 2?
16 A. I would say I don't remember it now.
17 Q. So you don't know whether you actually gave it to
18 him or not?
19 A. No.
20 MR. SAMITO: Objection.
21 MR. GRUNERT: Q. Do you remember how many
22 versions of the specification proposals you put
23 together over the course of negotiating with
24 Mr. Howard to arrive at the final specifications?

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1 Q. Now, what information did you give Mr. Calderbank
2 about the specifications that you had generated in
3 connection with the transaction that Mr. Howard
4 was contemplating?
5 A. He would already have it and he would already do
6 his own research. He would present me with the
7 stuff that he printed out and he would have the
8 same information I had.
9 Q. I'm not --
10 A. So I didn't present him with any information other
11 than the fact that we have a truck and we can put
12 his engine in it and it's all accepted, and where
13 do we go from here, Harry?
14 Q. I'm not asking you about information that you gave
15 him about the engine, I'm asking you what
16 information you gave Mr. Calderbank about the
17 specifications for the truck that you had been
18 generating over the course of these many
19 iterations of quotations that you were putting
20 together on your computer?
21 A. Well, you got -- he got a copy of this. We would
22 present him a copy of this so he could understand
23 exactly what was going on, but we would discuss
24 the axles, transmissions, weights, it was all

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1 A. Several.
2 Q. Do you remember when during the negotiation
3 process with Mr. Howard whereby you came up with
4 these revised proposals? Do you remember when in
5 that process you had your meeting or meetings with
6 Mr. Calderbank?
7 A. Yeah, when Mr. Calderbank called me and said that
8 Mr. Howard was going to go with Cat engines.
9 Q. So that's when you went and had your meeting with
10 Mr. Calderbank and he gave you the --
11 A. Final specifications.
12 Q. -- specifications for the C-12?
13 A. Right.
14 Q. After that point in time, did you have any other
15 meetings with Mr. Calderbank to go over with him
16 any changes that had been made to the
17 specifications, the truck specifications?
18 A. Not that I recollect.
19 Q. Did you keep any notes of your meetings with
20 Mr. Calderbank?
21 A. They are all in the bottom of the landfill in
22 Rochester, New Hampshire. Anything to do with
23 this transaction and Minuteman is in the bottom of
24 the landfill.

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- 1 Q. So the answer is you made notes, but they have
2 been disposed of?
- 3 A. I made lots of notes. Lots of notes.
- 4 Q. Now, you said that you also interacted in
5 connection with this transaction with one or more
6 individuals from Caterpillar's regional office.
7 Do you remember who those people were?
- 8 A. Nope. It was a guy that came up from Connecticut.
9 I don't remember him. So, I usually remember all
10 those guys but, obviously, he didn't make much of
11 an impression on me, but they usually came in and
12 they blew all their smoke and then they'd leave
13 town. They'd leave the water carrying up to guys
14 like Harry Calderbank.
- 15 Q. Do you remember specifically what discussions you
16 had with the person from the Caterpillar district
17 office in connection with the transaction that you
18 were negotiating with Mr. Howard?
- 19 A. I believe the discussion would be very brief
20 because, you know, you really like to deal with
21 the local guys, but these factory guys like to
22 come in and touch base with everybody, which is
23 what their job is, but I can't remember the guy's
24 name, which is very unusual, but I can't remember

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- 1 A. Oh, I'm sure we discussed that because he's
2 checking up on the local guys. So, I mean, I'm
3 sure that all comes into the discussion.
- 4 Q. Do you remember what kind of transmission you told
5 the person from the district office was going to
6 be in the trucks?
- 7 A. No, I can't really say that I remember I told him
8 what kind of transmission would be in the trucks.
- 9 Q. Do you remember talking about how the frame of the
10 trucks was going to be designed?
- 11 A. No, because Sterling makes that determination at
12 the engineering level at the factory.
- 13 Q. When you talked with the fellow from the district
14 office, did you mostly talk to him about things
15 such as the weight and the loads that these trucks
16 were going to be carrying and items of that sort?
- 17 A. Not -- no, not, because that was normally done
18 through Harry Calderbank and he submitted that to
19 Peoria on an approval basis.
- 20 Q. I'd like you to tell me as best you can what you
21 actually remember telling the fellow from
22 Caterpillar about these trucks that you were
23 negotiating with Mr. Howard about?
- 24 A. Not anything different than what I would

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- 1 the guy's name, so I remember that he came -- on
2 this particular deal, he ended up going to the
3 dealership a couple of times and talking to the
4 owner of the company.
- 5 And then he had a visit with me, maybe once
6 or twice, but it's more or less the fact to let us
7 know at Sterling that Caterpillar wanted this
8 transaction. They wanted this deal.
- 9 Q. All right. Did you discuss things like discounts
10 on the engines or financial terms?
- 11 A. No -- excuse me. I didn't mean to interrupt. We
12 didn't deal with that. He dealt with Harry.
- 13 Q. Okay. Did you discuss with the individual from
14 the district office the detailed specifications
15 that you had put together for these trucks?
- 16 A. More than likely, but I can't recollect that.
- 17 Q. No memory?
- 18 A. You know, more than likely we discussed it with
19 every guy that contacted us regarding the
20 specifications.
- 21 Q. Would you -- do you think that you discussed with
22 the individual from the district office the type
23 of transmission that was going to be in the
24 trucks?

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- 1 ordinarily talk to the Cummins guy or anything
2 else. I know that I'm a very thorough guy, as far
3 as discussing specifications, performance, and
4 getting -- and making sure that the customer has,
5 you know, gets what he pays for.
- 6 Q. Do you remember what you told the fellow from
7 Caterpillar about the nature of Mr. Howard's
8 business?
- 9 A. I don't think I would discuss that with the guy
10 from Caterpillar.
- 11 Q. All right. In terms of performance requirements,
12 do you recall what you told the fellow from
13 Caterpillar?
- 14 A. No. No.
- 15 Q. In terms of specifications, do you know what you
16 told the fellow from Caterpillar?
- 17 A. Well, we would discuss the general specifications.
18 I mean, that's -- normally, the engine would be
19 the -- because he's the engine rep, that would be
20 the real meat of the conversation, and I can only
21 tell you this, that the C-12 was an engine that
22 they really bet their -- they really bet their
23 load on. So they were bragging that engine up
24 like there was no tomorrow.